

DATE

Mr. Bradley Mistich  
3620 Nashville Avenue  
New Orleans, LA 70125

**Re: Docket No. 2022-112  
Advisory Opinion**

Dear Mr. Mistich:

The Louisiana Board of Ethics, at its April 8, 2022 meeting, considered your request for an advisory opinion as to whether you may provide engineering services to a prospective employer relating to certain transactions with the Louisiana Department of Transportation and Development.

#### **FACTS PROVIDED**

You are currently an employee of Louisiana Department of Transportation and Development ("DOTD"). You serve as an Engineer 6 in the bridge maintenance section of DOTD. In that role, you conduct inspections of in-service bridges, manage consultant contracts and aid district offices in bridge maintenance activities. As one of multiple persons serving in an Engineer 6 role within the bridge maintenance section of DOTD, you report to Bridge Inspection Engineer Stephanie Doolittle, who in turn reports to Bridge Maintenance Administrator Nicholas Fagerburg. Specifically, Mr. Mistich works on projects within bridge maintenance that deals with underwater inspections.

You would like to leave DOTD to accept a position with a private consultant to perform work that may involve the DOTD, but would not include any projects on which you have participated. You would not be performing any underwater maintenance consulting on any projects he was involved in with DOTD.

#### **LAW**

**La. R.S. 42:1121B** provides that no former public employee shall (1) for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or (2) for a period of two years following the termination of his public employment, render, any service which such former public employee had rendered to the agency during the term of his public employment on a contractual basis, regardless of the parties to the contract, to, for, or on behalf of the agency with which he was formerly employed.

**La. R.S. 42:1102(3)** defines “agency head” to mean the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

**La. R.S. 42:1102(18)(a)** defines “public employee” to mean anyone, whether compensated or not, who is (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) engaged in the performance of a governmental function; (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

### **ANALYSIS**

As an Engineer 6 for DOTD, you are a public employee under La. R.S. 42:1102(18)(a). Further, you are not the chief executive or administrative officer of your agency, the Bridge Maintenance Division, so you do not qualify as an agency head under La. R.S. 42:1102(3). Accordingly, as you are not the head of an agency or elected official, the general rule for all other public employees, La. R.S. 42:1121B, shall apply. Accordingly, for a period of two years after your termination of service to DOTD, you may not assist any person in transactions involving your agency in which you participated during your employment with DOTD.

### **CONCLUSION**

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics would permit you to provide services to a prospective employer which may relate to DOTD matters provided you did not participate in those matters during your employment with DOTD.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

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Charles E. Reeves, Jr.  
For the Board